

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ENUGU JUDICIAL DIVISION
HOLDEN AT ENUGU
ON MONDAY THE 24TH DAY OF FEBRUARY, 2014
BEFORE THE HONOURABLE JUSTICE M. L. SHUAIBU**

SUIT NO: FHC/EN/CR/38/2013

BETWEEN:

**FEDERAL REPUBLIC OF NIGERIA - COMPLAINANT
AND
GIFT ONYEGAM - ACCUSED**

M. A. Ekwu for the prosecution.

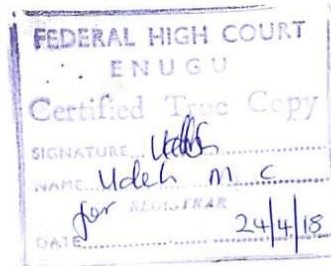
E. O. Isiwu for the Accused person.

JUDGMENT

The above named Accused person was arraigned and tried before this court on four counts charge of conspiracy and obtaining various sum of money from one Rosemary Ihekanacho by false pretences.

At the trial, the prosecution called three witnesses and tendered exhibit A, B, C, D, D1, E, E1 and F respectively. The Accused testified in his defence but called no other witness. In the end, the respective counsel filed and adopted their brief of arguments.

On behalf of the defence three issues were identified for consideration and these are:-

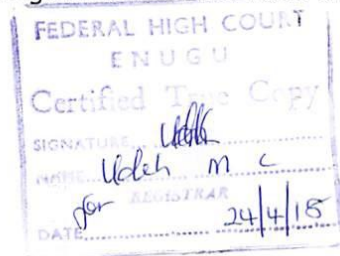


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1. Whether the identity of the Accused person was properly ascertained for purposes of prosecution.
2. Whether the evidence adduced by the prosecution support the charges against the Accused person.
3. Whether prosecution proved its case beyond reasonable doubt.

Learned defence counsel Mr. Isiwu contends that the purported identification conducted by the prosecution to identify the Accused in this case is flawed as what was conducted was a confirmation parade and not an identification parade. And that PW1's ability to recognize voices being a person who is vitually impaired is according to the defence counsel questionable. Thus, the failure of the prosecution to conduct an unimpeachable identification parade is fetal to their case on the following grounds:-

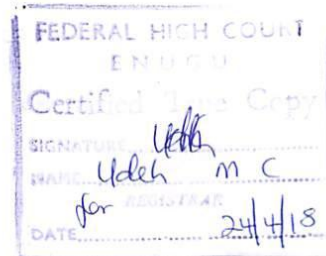
- (a) The facts of the case disclosed that there are more suspect than one, all of whom are atlarge except the Accused.
- (b) PW1's ability to recognize voices is questionable since from her evidence someone called her and told her that he was Patrick Abbah whom she had known while at the NYSC Camp. Yet she was not able to discern the voice speaking to through the phone and distinguish it from the voice of Patrick Abbah she had known.



- (c) The medium by which PW1 allegedly communicated with the Accused was through phone, which also is capable of altering a person's voice but the method by which PW1 identified the Accused was viva voca.
- (d) Accused person's evidence that PW1 said during investigation that she knew Patrick Abbah and not Gift Onyegam was not contradicted by the prosecution.

In the light of the above, the court was urged to hold that the prosecution has not ascertained the identity of the Accused person in this case.

Respecting the second issue identified above, the defence argued that there is a difference between obtaining and inducing delivery which postulates a situation where for instance A induces B to deliver to A or C. And that the evidence before the court is that the Accused induced PW1 to deliver money to other people's account and falsely pretended that he would give the money to his uncle in order to secure a job for PW1's son. Thus, the money was meant for the third party and the Accused merely had possession of it. The defence submits that the Accused was not guilty of obtaining by false pretence because the representation related to future matter. And to that extent, there is a variance in substance between the charge and the evidence and hence



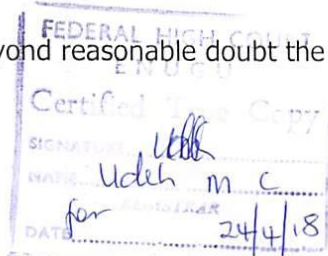
detrimental to the prosecution's case relying on **ADEYEMI –V- C.O.P (1961)**
ALL NLR 387.

It was finally submitted that none of the prosecution witnesses was able to conclusively identify the Accused and this according to the defence counsel has created doubt which must be resolved in favour of the Accused person.

On behalf of the prosecution three issues were also identified for determination and these are:-

1. Whether the prosecution has proved the offence of obtaining money by false pretence against the Accused person beyond reasonable doubt.
2. Whether the voice identification of the Accused person by PW1 is sufficient and acceptable in law.
3. Whether the prosecution has proved the offence of conspiracy against the Accused person.

Learned prosecuting counsel Mr. Ekwu contends that the prosecution has led evidence that there was a scam to which PW1 fell victim due to her naivety and blind condition, a situation which led to her financial impoverization and the Accused person has been positively linked to the scam. Therefore, the prosecution has established the essential elements of the offence of obtaining money by false pretence and has proved beyond reasonable doubt the guilt and



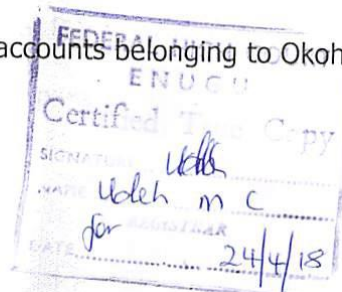
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culpability of the Accused person relying on **EDAMINE –V- STATE (1996) 3 NWLR (part 438) 530 at 539.**

It was further contended that the Accused person has in his extra –judicial statement Exhibits F & F1 gave a vivid narration of how he defrauded PW1 which also conclusively established the guilt of the Accused beyond reasonable doubt. Reliance was placed on section 28 of the Evidence Act and the cases of **ACHABUA –V- STATE (1976) 12 SC 41 and FRN –V- MACLEVER (2007) EFCC LR 165** to the effect that confession alone if proved is sufficient to ground the conviction of the Accused person.

On the second issue, it was contended that the evidence of PW1 and PW3 is relevant in the sense that PW1 was able to identify the Accused at the EFCC office through his voice. And that she was familiar with the Accused’s voice as they spoke severally on phone. Reliance was placed on **ABE –V- STATE (1992) 5 NWLR (part 244) 642 at 649 and FRN –V- ODIAWA (2006) 3 EFCC LR** to the effect that there may be sufficient identification of a person by his voice.

Respecting the third issue, Learned prosecuting counsel referred the court to the evidence of PW1 wherein she stated that the Accused called her and induced her to pay money into various banks’ accounts belonging to Okoh



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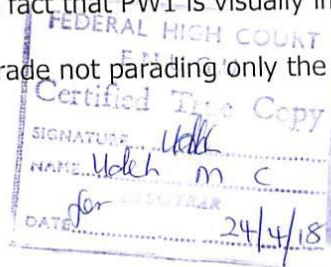
Ayebaye Susan and Alamabo Teneilaibe. Thus, the prosecution has proved the offence of conspiracy as contained in count one of the charge. Reliance was placed on **ERIM –V- STATE (1994) 5 NWLR (part 3406) 522 at 533** to the effect that the duty of the court in every case of conspiracy is to ascertain as best as it could the evidence of complicity of any of those charged with the offence and the court could infer conspiracy from the facts of doing things towards a common end.

The issues as identified by the respective counsel are similar and that same could be condensed into two that is:-

1. Whether the Accused was sufficiently identified through voice identification.
2. Whether the prosecution has proved the essential elements of the allegations in four counts of the charge beyond reasonable doubt.

Under our criminal jurisprudence where doubt exist in the mind of the court on the guilt of an Accused person, the court should acquit and discharge the Accused. Thus, insufficiency of evidence or lacking in credibility of evidence cannot ground a conviction.

The defence has contended that the fact that PW1 is visually impaired, there should have been a proper voice parade not parading only the Accused



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person. There is no dispute as to the fact that she is visually impaired. Nonetheless, she gave vivid account on how they started communicating for a very long period of time up to the time of his arrest when they met at the EFCC office in Enugu. PW1 emphatically told the court that she recognized his voice even though he bears different name. Even when PW1 was pressed under cross-examination, she maintained that notwithstanding her visual incapacitation, she was able to recognized his voice. When asked further, PW1 said:-

“The Accused talked and I asked him his name and I recognized the voice as that of Abah”. That at the EFCC the Accused talked to me not through phone but it was the same voice”.

Also in his evidence PW3, the investigating officer said the Accused was brought for interview and when he spoke, the victim (PW1) identified the voice as that of Abah who was demanding money from her. Eventhough, the Accused was the only one brought out for voice identification, he was in the peculiar circumstance of the case been sufficiently identified and there was no basis for parading many people as suggested by the defence. In **IBE –V- STATE** aswell as **FRN –V- ODIAWA** (supras) it was held that there may be sufficient identification of an Accused person by his voice and the voice identification in the instant case has suffice.



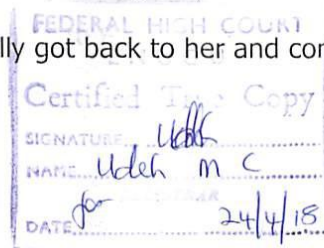
The next issue for determination is whether the prosecution has proved the allegations against the Accused person beyond reasonable doubt. It is imperative to note that the guilt of an Accused person can be proved by:-

- (a) the confessional statement of the Accused person, or
- (b) Circumstantial evidence, or
- (c) evidence of eye witness of the crime.

Thus, the prosecution does not always need an eye witness account to convict an Accused if the charge can otherwise be proved.

In this case, the allegation in count one relate to conspiracy while counts two, three and four deal with obtaining various sum of money from PW1 by the Accused and his cohorts through false pretences.

As regards the allegation of conspiracy, the evidence of PW1 was that she received a telephone call from one Patrick Abah who introduced himself as her colleague during their National Youth Service and now working at Shell BP in Port Harcourt. The later offered to help her through his inlaw to secure a job with Shell which is very lucrative. But owing to her disability (visual impairment) she turned down but instead presented the case of her son who has just finished school. The said Patrick Abah promised talking to his inlaw and after which he will get back to PW1. He eventually got back to her and conveyed his

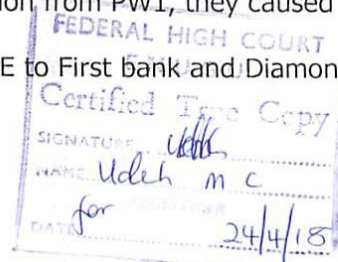


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inlaw's approval to assist eventhough some money is involved. Consequently, the said Abah sent an account Number with account name of Okoh Ayabaye in which she paid the initial sum N70,000 in account No 304814832 at First bank as shown in the deposit slip No. 747353 in Exhibit B series.

Subsequently, Patrick Abah called PW1 and demanded N20,000 for processing her son's international passport which he said the said money is to be re-inbursed to her son when he start the work. That the international passport is required because her son will under go training in USA before he start the work. That she was asked to pay N350,000 for her son ticket. As she had no money, she paid N49,000 to the same First Bank with different account sent to her by Mr. Abah. And she later paid the balance of N301,000. That she was also made to pay N220,000 being anti-terrorism certificate in which she paid N100,000 while Patrick Abah promised completing N120,000. Mr. Abah according PW1 called her again, and said there is something outstanding which cost N120,000. She again paid N100 and Mr. Patrick also agreed to balance the remaining amount. In all she paid the sum of (N771,000.00) into the accounts Okoh Ayebaye Susan and Alamabo Teneilaibe respectively at First Bank PLC and Diamond Bank PLC upon the prompting and directives of Patrick Abah.

PW3 testified that upon receipt of a petition from PW1, they caused Letters of investigation activities Exhibit C and E to First bank and Diamond PLC

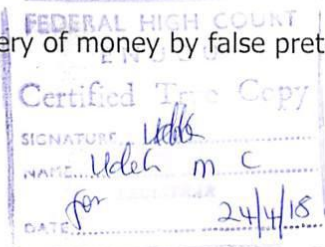


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and that they received responses in exhibits D, D1, E and E1 and all these payments of N49,000, N301,000, N50,000, N100,000, N50,000, N70,000 are clearly reflected as cash deposit by Mary Rose Iheakanacho U. (PW1). Thus, there was ample evidence that PW1 has indeed made the payments of the exact amount into these accounts.

PW3 has testified further that he received a call from diamond Bank in Port Harcourt that Alamabo Teneilaibe was arrested at a point of withdrawing from the account been investigated. He rushed to Port Harcourt and in his statement, the said Alamabo said the Accused Gift collected his account and gave it to his sister who promised sending him money. And when the sum of N100,000 was paid into his account, he collected and handed over to Gift (Accused) who in turn gave him N3,000. And that was how Alamabo led to him to the arrest of the Accused. Upon the arrest of the Accused, he volunteered a statements admitting defrauding the victim (PW1). PW2 Alamabo Teneilaibe also corroborated the evidence of PW3 as regards payment of N100,000 to the Accused via his account.

In **NWANKWO –V- FRN (2003) 4 NWLR (part 809) 1 at 35** it was held that once the ingredients of the particular offence the Accused person is charged with are proved, that constitutes proof beyond reasonable doubt. And the ingredients of offence of obtaining delivery of money by false pretence are:-

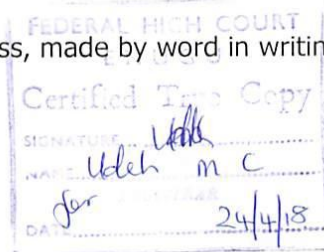


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- (a) that there was pretence,
- (b) that the pretence emanated, from the Accused person,
- (c) that it was false,
- (d) that the Accused person knew of its falsity or did not believe in its truth.
- (e) that there was an intention to defraud,
- (f) that the thing is capable of being stolen, and
- (g) that the Accused person induced the owner to transfer his whole interest in the property.

See **ALAKE –V- STATE (1991) 7 NWLR (part 205) 567 at 591.**

In this case, the defence has sought to draw a difference between obtaining by inducement and obtaining by pretence. To induce is to act or entice or persuade another person to take certain course of action usually by means of fraud. Pretence on the other hand is a false motive advanced to hide the actual motive. Thus, there is no any distinction between obtaining money by inducement or by false pretence. In section 20 of the Advanced fee fraud and Other Fraud Related Act, "false pretence" was defined to means a representation whether deliberate or reckless, made by word in writing or by



conduct, of a matter of fact or law, either past or present, which representation is false in fact or law, and which the person making it knows to be false or does not believe to be true.

I have reviewed the evidence of the prosecution and that both the testimonies of Pw1, PW2 and PW3 as well as the documentary evidence namely the deposit slips and the banks accounts details have conclusively shows that the Accused and his cohorts and no any other person defrauded PW1 albeit under false pretences. The Accused as DW1 gave his name as Gift Onyegam not Patrick Abah as earlier presented to PW1. He has not secured the job to the son of PW1 after inducing her to pay him huge amount of money. In making PW1 to pay him such amount of money, the Accused knew those representation to be false and he did not believe the representation to be true. The Accused was infact not a staff of Shell BP and has not prove any scintilla of evidence to show that he has an inlaw that could assist anybody to secure a job with Shell BP. In his extra judicial statements, he said he drove Okada and also work with security company which is tandem with the evidence of PW2. The Accused in his statements in Exhibits F and F1 admitted defrauding PW1 by giving her accounts both for First Bank and Diamond Bank where she paid the money. He went further to state that he bought bus with the money he got from PW1.



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It is the law that confession is an admission made at any time by any person charged with a crime stating or suggesting the inference that he committed the crime. The fact that the Accused as in this case has retracted his confession does not mean that the court can not act on it and convict him as the circumstances of the case justify.

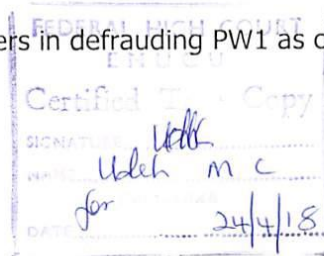
Aside the confession, there are other compelling evidence in this case which positively point to the guilt of the Accused person. The evidence of the prosecution through PW1, PW2 and PW3 as well as the bank statements and deposit slips have strengthened the case of the prosecution. In **MBANG –V- STATE (2010) 7 NWLR (part 1194) 431 at 453**, also following the decision in **AKPA –V- STATE (2008) 14 NWLR (part 1006) 72** it was held that a free and voluntary confession of guilt, direct and positive if duly made and satisfactorily proved is sufficient without corroborative evidence is enough to ground a conviction. This is so because it is stronger than the evidence of an eye-witness because the evidence comes out from the horses mouth who is the Accused person. There is no better evidence and there is no need for further proof since what is admitted needs no further proof. Also in **NWOSU –V- STATE (2004) 15 NWLR (part 897) 466 at 489** it was held that confession made in judicial proceedings is of greater force than all proof.

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The allegation in count one of the charge is that the Accused conspired with others (now at large) to obtain money from PW1 by false pretence. Conspiracy is established if it is shown that the criminal design alleged is common to all the suspects. And proof of how they connected with or among themselves is not necessary. Indeed they need not know each other. They need not have started the conspiracy at the same time. Thus, it is sufficient even though the conspiracy had been started and some persons joined at a later stage. The bottom line of the offence is the meeting of the minds of the conspirators. Refer to **NWOSU –V- STATE** (supra). The evidence of PW1 is imperative as regards the prove of conspiracy in this case. That when she paid N100,000 into the account of Okoh Ayebaye, the said Ayebaye called her number to acknowledge receipt and also promised to secure appointment for her son. This clearly show that the Accused was acting in concert with others in defrauding her. In **DABOH –V- STATE (1977) 5 SC 197** it was held that since it is a difficult offence to prove directly, inference from the certain criminal acts of the parties concerned in pursuance of an apparent criminal purpose will suffice.

I have held else where in this Judgment that the prosecution have proved the essential ingredients of the offence of obtaining by false pretence and that the Accused was acting in concert with others in defrauding PW1 as can be



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deduced from other proven facts. Therefore the prosecution has discharged the burden of proving the allegations in the four counts charge against the Accused beyond reasonable doubt. The Accused person Gift Onyegam is accordingly found guilty as charged.

Sentence: The convict is hereby sentenced to Ten years imprisonment on each count with effect from today. The sentence shall run concurrently. Also the convict shall pay the Nominal complainant through the EFCC the sum of N711,000 being restitution.



M. L. SHUAIBU
JUDGE
24/2/14

